

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2025] NZEmpC 50
EMPC 485/2024**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for urgency

AND IN THE MATTER OF an application for a non-publication order

AND IN THE MATTER OF an application for a stay

BETWEEN SCOTT'S BREWING LIMITED
Plaintiff

AND TYLA JAE SCOTT
Defendant

Hearing: On the papers

Appearances: S A Dyhrberg, counsel for plaintiff
J Sumner and R A Hill, counsel for defendant

Judgment: 18 March 2025

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for urgency, application for non-publication and application
for stay)**

[1] On 10 December 2024, Scott's Brewing Ltd filed a challenge to a determination of the Employment Relations Authority that ordered that Tyla Scott be reinstated on an interim basis to the payroll of Scott's Brewing.¹ She is now receiving approximately \$8,840 per month from Scott's Brewing.

¹ *Scott v Scott's Brewing Ltd* [2024] NZERA 669 at [68].

[2] On 11 December 2024, Scott's Brewing filed an application for non-publication orders with respect to its challenge, including over the names of any party or person involved in the proceeding, and the content of the proceeding, evidence and eventual judgment.

[3] Scott's Brewing also sought urgency because of the impact it said the Authority's order had, and continues to have, on its financial position and cashflow.

[4] At that stage, no evidence was filed in support of either application.

[5] The Court convened a directions conference on 17 December 2024.

[6] At the directions conference, Ms Hill, counsel for Ms Scott, advised that Ms Scott opposed the application for urgency and wished to review the evidence to be filed in support of the application for non-publication prior to responding.

[7] Timetabling orders were made, including for the filing of evidence and submissions on the two interlocutory matters.

[8] On 23 December 2024, Scott's Brewing filed an application for a stay of the order reinstating Ms Scott to the payroll of Scott's Brewing. Ms Scott opposes the application for a stay.

[9] This judgment resolves all three interlocutory matters.

Scott's Brewing was established by Mr and Ms Scott

[10] By way of context, Ms Scott and her now estranged husband, Phillip Scott, started Scott's Brewing in Auckland in 2007 and worked in it together, including after it moved to Oamaru in 2013. Mr Scott is the sole director of Scott's Brewing. He holds 95 per cent of the shares and Ms Scott holds five per cent of the shares. Ms Scott was employed to carry out certain business duties and responsibilities, including in administration, finances and human resources.

[11] Mr and Ms Scott separated in July 2023.

[12] Ms Scott's employment with Scott's Brewing was terminated for reasons of redundancy at the end of July 2024. She subsequently raised a personal grievance for unjustifiable dismissal against Scott's Brewing. She is seeking permanent reinstatement to her previous role at Scott's Brewing and sought interim reinstatement pending the outcome of that matter. As noted, the Authority ordered that Ms Scott be reinstated to the payroll of Scott's Brewing on an interim basis. It did not order that she be placed back to work at Scott's Brewing.

[13] No non-publication orders were sought in the Authority and, on the issuing of the determination in November 2024, the case was reported in the news media, including in a front-page article in the local community newspaper, the Oamaru Mail.

Mr and Ms Scott both provided evidence

[14] Mr Scott gave evidence that, despite a 34 per cent improvement in gross profits (on the back of a 6 per cent increase in sales), Scott's Brewing has suffered an overall decline in profit of 18 per cent. He says that removing Ms Scott's salary from the payroll would improve Scott's Brewing's bottom line.

[15] He understood that a case management conference before the Authority was set down for the middle of March 2025, with a date for the investigation meeting then to be determined. He says that the impact on the business of the amount paid to Ms Scott will have a compounding effect as Scott's Brewing continues to take a financial hit yet gets "nothing in return."

[16] In relation to the non-publication issue, Mr Scott says Scott's Brewing and its employees did not expect the publicity that followed the Authority's determination and was shocked by the tone of it. He says that the articles in the media have given rise to gossip and speculation in the small, tight-knit community of Oamaru, where Scott's Brewing operates and where he lives. He expresses concern over the impact on staff, including on the Chief Executive Officer of Scott's Brewing. He gave evidence that the publicity also has the potential to adversely affect Mr and Ms Scott's two young children, who, he says, are both aware of the court proceedings, including that Scott's Brewing made their mother redundant.

[17] Ms Scott opposes all three applications. She has provided the Authority with an undertaking as to damages and understands that this means that if she is unsuccessful in getting permanently reinstated, she might, subject to the Court or Authority's determination, have to reimburse Scott's Brewing for any proven damages caused by her interim reinstatement to the payroll.

[18] Ms Scott gave evidence that, although she owns property, aside from \$374.25 per week she receives from Mr Scott for child support, the salary from Scott's Brewing is the only income that she receives. She says she would be at a significant financial disadvantage if she is unable to continue to work and/or be paid for her role at Scott's Brewing.

[19] She says she is also dealing with the financial burden of the three sets of proceedings Mr Scott has filed against her, being in the Family Court for relationship property orders, in the High Court regarding the family trust, and then this challenge.

[20] She disputes the significance of the impact on Scott's Brewing of paying her salary. She has provided a copy of Scott's Brewing's annual report for the year ended March 2024, which confirms that Scott's Brewing had a significant surplus in that year, even with deductions for payment of Mr and Ms Scott's salaries.

[21] She advises that, in August 2024 anyway, Scott's Brewing had at least \$500,000 in an interest-accruing savings account, and that it may have recently purchased a new Ford Ranger vehicle.

[22] On that basis, she opposes both the application for urgency and the application for a stay.

[23] Ms Scott says she also was surprised to see that the Authority's determination was reported on in the news media; she was not contacted for comment.

[24] She agrees that the Scotts' older child is aware that there are court proceedings and that Ms Scott had lost her job. She says this child also is aware that Ms Scott has been concerned about her financial situation. Ms Scott says, however, that her older

child has not mentioned anything to her about being approached by anyone about the news media articles, or the matter generally.

[25] Ms Scott says that the younger child, however, is not of an age to be able to comprehend the issues, nor is it something that is being discussed among that child's friends or at home.

[26] Finally, I note that Ms Scott and the two children do not presently live in Oamaru; they live in another centre some distance away.

[27] I deal first with the application for a stay.

The application for a stay is unsuccessful

[28] A challenge does not operate as a stay.² There are, however, circumstances in which a stay of proceedings under a determination of the Authority is appropriate while a challenge is pursued.³

[29] An applicant for a stay must satisfy the Court that adequate grounds have been made out.⁴ Any order made must be the least necessary to preserve the position of the applicant. Where a stay of payment is sought, the applicant can be expected to make some concessions, such as offering to make a payment into court pending the outcome of the challenge.⁵

[30] The Court balances the interests of both parties, and the following factors will, where relevant, be considered:⁶

- (a) whether the challenge will be rendered ineffectual if a stay is not ordered;

² Employment Relations Act 2000, s 180.

³ Employment Court Regulations 2000, reg 64.

⁴ *Grove v Archibald* [1998] 2 ERNZ 125 at 128 and 129.

⁵ *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

⁶ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]]; and *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

- (b) whether the challenge is brought for good reasons and being pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay will impact on third parties;
- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceedings;
- (g) the overall balance of convenience; and
- (h) the likely merits of any related challenge.

[31] The overarching consideration is the interests of justice.

[32] There is no basis for finding that the challenge would be rendered ineffectual if the stay is not granted. Although neither party addressed Ms Scott's assets in any detail, she has confirmed she has assets; it is income that she currently has little of. She has a five per cent shareholding in Scott's Brewing, and there is mention of matrimonial property proceedings and of a family trust. She has given an undertaking as to damages, which the Authority has accepted. There is no basis for suggesting that Scott's Brewing would not be able to recover payment of any amounts Ms Scott ultimately may be ordered to repay as a result of her interim reinstatement onto Scott's Brewing's payroll.

[33] Scott's Brewing has suggested that, as an alternative to an outright stay being granted, the Court could order a stay on condition that payments be made to the trust account of the firm representing Ms Scott, to be held there pending the outcome of the challenge. However, such an arrangement would not assist Ms Scott in the meantime.

[34] For the purposes of the application for a stay, I assume the challenge is brought for good reason and is being pursued in good faith.

[35] While Mr Scott has provided evidence of the impact on Scott's Brewing's "bottom line", that evidence does not go so far as to suggest that paying Ms Scott has any impact on the way in which the business has been and will be carried out, or on the employment of any staff.

[36] Mr and Ms Scott's children live with Ms Scott. The amount Mr Scott is paying in the way of child support is not significant; the household almost certainly would be impacted if Ms Scott is on a reduced income at this stage, and that would adversely affect not just Ms Scott herself, but the children, particularly the older child who is already conscious of Ms Scott's concerns about her financial position.

[37] The reasons already outlined indicate that the overall balance of convenience does not favour a stay; Scott's Brewing is not significantly impacted by retaining Ms Scott on the payroll, pending the hearing of its challenge; Ms Scott, on the other hand, would be impacted by a stay being ordered (even a stay on condition that the monies be paid into a trust account) as it would deprive her of the immediate provision of income into the family household.

There is no order for non-publication

[38] There is no application for a retrospective non-publication order in respect of the Authority's determination and such an order would be ineffectual given the publication that has already occurred. What is sought are non-publication orders in respect of the challenge. Essentially, Scott's Brewing is wishing to stop a reignition of the discussions that may have occurred from the publicity surrounding the Authority's determination.

[39] The Employment Court has recently confirmed a two-step test to be applied when the Court is considering an application for non-publication.⁷

⁷ *MW v Spiga Ltd* [2024] NZEmpC 147, (2024) 20 NZLR 723.

[40] First, the Court must be persuaded that there is reason to believe that specific adverse consequences could reasonably be expected to occur if there is no order for non-publication.⁸

[41] If the applicant overcomes that hurdle, the Court must consider whether those specific adverse consequences justify a departure from open justice in the circumstances of the case.⁹ This is a weighing exercise. Equity and good conscience may play a part.

[42] In the present case, Scott's Brewing says that the relevant factors comprise:

- (a) the interests of Mr and Ms Scott's children;
- (b) the commercial interests of Scott's Brewing; and
- (c) the interests of the employees of Scott's Brewing.

[43] As noted, the children live with their mother in another town. They are both young; the younger child has no knowledge of the dispute; the older child is aware of their mother's employment issues but there is no suggestion that they have been affected by the previous publicity.

[44] There is no specific evidence of the impact of further publication on the commercial interests of Scott's Brewing.

[45] Mr Scott has provided evidence that the Chief Executive Officer has children, but no particular concerns have been raised about the position of either the Chief Executive Officer or their children. The only evidence from Mr Scott about other employees is that they have faced questions about what is happening, which he says has caused unrest. No employees of Scott's Brewing have given evidence.

[46] A significant factor in this case is that information about the case, including the names of the parties, has already been published, not just in the determination on the

⁸ At [88].

⁹ At [89].

Authority's website but in several prominent newspaper articles. Mr Scott's evidence was that all households in the Oamaru district will have received one or other of the publications in which the Authority's proceedings were reported. This is not a case that falls within the category discussed in *Spiga*, where publication has only been made to a small group of people; the horse here has truly bolted.¹⁰

[47] As the Authority's determination has been reported on, I see little, if any value in not reporting that the determination is the subject of a challenge, or of reporting on the outcome of the challenge in due course. To the contrary, I see that as being in the public interest.

[48] While there is mention in this judgment of some of the financial aspects of Scott's Brewing's business, it is not suggested, and it is not apparent, that reporting on its positive financial position would cause it any harm.

[49] In short, I am not satisfied that there is a basis for a non-publication order to be made with respect to the challenge.

[50] It has not been necessary to refer to the names of the Scotts' children, their genders or their current hometown, but, for the avoidance of doubt, there is an order that the Court file may not be accessed by any non-party without a further order of the Court.

[51] To allow the parties time to consider this judgment, it will not be published on the Court's website until at least seven days following today's date.

Case to be dealt with expeditiously

[52] Finally, I consider the issue of urgency. The proceedings were filed without evidence initially and the application for urgency was opposed.

[53] While I do not consider that the ongoing impact of the Authority's orders on Scott's Brewing requires that the case be accorded urgency, prioritising it over other

¹⁰ At [100].

proceedings before the Court, I accept that the ongoing nature of the interim reinstatement order from the Authority means that the challenge to the Authority's determination ought to be dealt with expeditiously. A statement of defence has been filed. The Registrar is directed to convene a directions conference as soon as practicable for evidence on the challenge to be timetabled, and then for a fixture to be allocated.

Ms Scott is entitled to costs

[54] Ms Scott is successful in opposing the applications from Scott's Brewing and is entitled to costs. If those cannot be agreed between the parties, then an application may be filed and served within 21 days of the date of this judgment. Any response from Scott's Brewing is to be filed and served within a further 21 days, and any reply from Ms Scott is to be filed and served within seven days thereafter.

J C Holden
Judge

Signed at 10 am on Tuesday 18 March 2025